

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW LEIGH SHELL,

Defendant and Appellant.

A147631

(San Mateo County
Super. Ct. Nos. NF438121A,
NF438811A)

Matthew Leigh Shell appeals two judgments imposing a three-year prison term based on his pleas of no contest in two combined felony cases. His attorney raises no issue and requests the court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Counsel confirms that she has advised appellant of his right to file a supplemental brief, and he has not done so. Having reviewed the record we find no colorable error or basis for further briefing and shall affirm the judgments.

Counsel's brief accurately summarizes the proceedings below, and with minor revisions we adopt her summary.

In case No. NF438121A (the first case), appellant was charged by felony information . . . with three counts: burglary in violation of Penal Code section 460, subdivision (b), a felony (count one); possession of a billy, blackjack, etc., in violation of Penal Code section 22210, a felony (count two); and (3) receiving stolen property with a value exceeding \$950 in violation of Penal Code section 496, subdivision (a), a misdemeanor (count three).

As to counts one and two of the first case, it was further alleged that appellant had prior convictions for the following felonies within the meaning of Penal Code section 1203, subdivision (e)(4): one conviction under Penal Code section 487, subdivision (b)(3) (grand theft); and three separate convictions under Health and Safety Code section 11377 (possession of a controlled substance). It was also further alleged as to counts one and two that, pursuant to Penal Code section 667.5, subdivision (b), appellant had served a prior prison term for a conviction under Penal Code section 487, subdivision (b)(3) (grand theft), and that he did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of the prison term. Finally, it was alleged as to counts one and two of the first case that, at the time of the commission of the offenses, appellant was released from custody on bail or on his own recognizance in [four other cases] within the meaning of Penal Code section 12022.1.

In case No. NF438811 (the second case), appellant was charged by felony information with four counts: first degree burglary with a person present, in violation of Penal Code section 460, subdivision (a), a felony (count one); possession of burglar's tools in violation of Penal Code section 466, a misdemeanor (count two); being under the influence of a controlled substance in violation of Health and Safety Code section 11550, subdivision (a), a misdemeanor (count three); and possession of drug paraphernalia in violation of Health and Safety Code section 11364, a misdemeanor (count four).

The information filed in the second case noted that count one was a serious felony within the meaning of Penal Code section 1192.7, subdivision (c)(19). It was further alleged that count one was a violation of Penal Code section 462, subdivision (a), and that it was a violent felony within the meaning of Penal Code section 667.5, subdivision (c)(21). Additionally, as to count one, it was alleged that appellant was released from custody or on his own recognizance in case number NF438121 (the first case here) and in case number NF438120 at the time the offense was committed. Lastly, it was alleged as to count one of the second case that appellant had the same prior

convictions pursuant to Penal Code sections 1203, subdivision (e)(4) and 667.5, subdivision (b) listed above under the first case.

At a change of plea hearing, appellant pleaded no contest in both the first and second cases pursuant to a negotiated plea. In the first case, appellant pleaded no contest to count one (burglary) and count two (possession of a billy), and he admitted his prior felonies under Penal Code section 1203, subdivision (e)(4). In the second case, he pleaded no contest to count one (first degree burglary with a person present), and he admitted that the offense was serious under Penal Code section 1192.7, subdivision (c)(19), and violent under Penal Code section 667.5, subdivision (c)(21). He also admitted his prior felonies under Penal Code section 1203, subdivision (e)(4).

Appellant was sentenced in the first case to a total term of three years imprisonment, which was the upper term for each count. In the second case, appellant was sentenced to a total of three years imprisonment, the low term of two years, plus a consecutive term of one year for the Penal Code section 667.5, subdivision (b) allegation. The court ordered all of the three-year sentences to run concurrently.

At the change of plea hearing, appellant knowingly waived his constitutional trial rights, as the trial court found, and a stipulated showing was made as to the factual basis for each of the charges to which appellant pleaded no contest. Appellant was at all times competently represented by counsel.

The judgments are affirmed.

Pollak, J.

We concur:

McGuiness, P. J.

Siggins, J.

A147631